

1 DAVID M. GOSSETT (D.C. Bar No. 468390)

2 david.gossett@fcc.gov

3 Telephone: (202) 418-0980

4 Facsimile: (292) 418-2822

5 RICHARD K. WELCH (Va. Bar No. 28920)

6 richard.welch@fcc.gov

7 Telephone: (202) 418-7225

8 Facsimile: (202) 418-2819

9 LAUREL R. BERGOLD (D.C. Bar No. 911339)

10 laurel.bergold@fcc.gov

11 Telephone: (202) 418-1747

12 Facsimile: (202) 418-2819

13 FEDERAL COMMUNICATIONS COMMISSION

14 445 12th Street S.W.

15 Washington D.C. 20554

16 Attorneys for *Amicus Curiae*

17 **UNITED STATES DISTRICT COURT**
18 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
19 **SAN FRANCISCO COURTHOUSE**

20 MARK HEINRICHS, individually and on

21 behalf of all others similarly situated,
22 Plaintiff,

23 v.

24 WELLS FARGO BANK, N.A. et al,

25 Defendant.

No. CV 13-05434 WHA

Hon. William H. Alsup

CLASS ACTION

STATUS REPORT

26 The Federal Communications Commission hereby responds to the Court's September 3,
27 2014 request for a status update concerning two petitions pending before the agency involving an
28 issue arising under the Telephone Consumer Protection Act ("TCPA"). Petition for Expedited
Declaratory Ruling, filed by United Healthcare Services, Inc. (Jan. 16, 2014); Petition for
Rulemaking of ACA International (Jan. 31, 2014). The Court noted that it "has been informed"

Status Report

MARK HEINRICHS v. WELLS FARGO BANK, N.A. et al, CV 13-05434 WHA

1 by the parties to the above-captioned case that these petitions are “potentially dispositive” of the
2 issue in this case (Court Order at 1), *i.e.*, whether the “express consent” exception in 47 U.S.C.
3 § 227(b)(1)(A) applies to autodialed or prerecorded calls to a wireless telephone number that has
4 been reassigned to a new subscriber without the caller’s knowledge, when the previous
5 subscriber (but not the new subscriber) had given the calling party consent to place calls to that
6 telephone number.
7

8 The Commission has not in the past directly addressed the issue of consent as applied to
9 calls made to reassigned wireless telephone numbers raised by the two petitions. The
10 Commission has solicited comments on this subject from interested parties. Its staff has
11 reviewed those comments and is formulating recommendations that will be presented to the
12 FCC’s commissioners for a vote. Although substantial progress has been made, in response to
13 the Court’s specific question, Commission counsel does not anticipate that the agency will issue
14 a final decision on either of the pending petitions by the middle of October 2014. Nor is
15 Commission counsel in a position to predict when the Commission will vote to approve a final
16 order on this matter.
17
18

19 Respectfully submitted,

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21
22 _____
23 David M. Gossett
24 Acting Deputy General Counsel

25 Richard K. Welch
26 Deputy Associate General Counsel

27 Laurel R. Bergold
28 Counsel

 Federal Communications Commission
 Washington, D.C. 20554
 (202) 418-1700

September 25, 2014